

NORTHERN DISTRICT OF CALIFORNIA

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JURY TRIAL

1        THURSDAY, DECEMBER 20, 2018

11:02 A.M.

2                                P R O C E E D I N G S

3                (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.

4                **THE COURT:**    ALL RIGHT.    LET'S GO ON THE RECORD.

5                **THE CLERK:**    CALLING CIVIL MATTER 17-3961 YGR NEWTON  
6                VERSUS EQUILON ENTERPRISES.

7                **THE COURT:**    OKAY.    GOOD MORNING, EVERYONE.

8                **MR. LAFAYETTE:**    GOOD MORNING, YOUR HONOR.

9                **MS. NUGENT:**    GOOD MORNING.

10               **THE COURT:**    THE RECORD WILL REFLECT THAT THE PARTIES  
11               ARE PRESENT, INCLUDING ATTORNEYS, THE PLAINTIFF, AND THE  
12               CORPORATE REPRESENTATIVE.

13               WE RECEIVED A QUESTION AGAIN FROM THE JURY PRETTY MUCH IN  
14               THE SAME FORM AS YESTERDAY'S WHICH READS AS FOLLOWS:

15               WHAT HAPPENS IN CASES LIKE THESE IF A JURY CANNOT REACH  
16               UNANIMOUS AGREEMENT ON AN AWARD AMOUNT?

17               SO, I ASKED YOU LAST NIGHT TO THINK ABOUT WHAT IT IS THAT  
18               YOU MIGHT WANT ME TO DO IN THE EVENT THAT WE RECEIVED THE  
19               QUESTION AGAIN THIS MORNING.    THEY ARRIVED AT 8:30 THIS  
20               MORNING AND HAVE BEEN DELIBERATING SINCE THAT TIME.    I  
21               RECEIVED THIS QUESTION AT 10:30, SO THEY WENT ANOTHER TWO  
22               HOURS THIS MORNING.

23               WHAT I WOULD LIKE YOU TO DO IS WRITE DOWN FOR ME -- I'LL  
24               SHARE IT WITH YOU, BUT I WOULD LIKE FOR YOU TO WRITE ON A  
25               PIECE OF PAPER FOR ME WHAT YOU WOULD LIKE TO DO.    I WANT TO

1 KNOW WHAT YOU EACH WANT TO DO INDEPENDENT WITHOUT HAVING HEARD  
2 THE OTHER SIDE. WRITE IT DOWN, AND THEN WE WILL HAVE A  
3 CONVERSATION. WRITE DOWN FOR ME A NOTE. TELL ME WHAT IT IS  
4 YOU WANT ME TO DO, AND I WILL READ THE NOTES OUT LOUD AND THEN  
5 WE WILL HAVE A DISCUSSION.

6 (PAUSE IN THE PROCEEDINGS.)

7 **MR. LAFAYETTE:** I HAD TO DO SOMETHING I HAVEN'T BEEN  
8 DOING FOR A WHILE WHICH IS ACTUALLY WRITE ON PAPER.

9 **THE COURT:** AMAZING.

10 (DOCUMENT HANDED TO COURT.)

11 (DOCUMENT HANDED TO COURT.)

12 **THE COURT:** ALL RIGHT. WELL, YOU DISAGREE.

13 **MS. NUGENT:** IMAGINE THAT.

14 **THE COURT:** SO PLAINTIFFS ARE ASKING THAT I READ 3.7  
15 AND INFORM THEM OF THE -- THAT THE CONSEQUENCE OF NOT DECIDING  
16 ON AN AWARD AMOUNT WILL BE A MISTRIAL.

17 DEFENSE WOULD LIKE ME TO DISMISS THE JURY AND THANK THEM  
18 FOR THEIR SERVICE. WE DO NOT NEED TO TELL THEM ABOUT THE  
19 POSSIBLE MISTRIAL.

20 I THINK THAT I NEED TO ASK THEM THE STANDARD QUESTIONS  
21 ABOUT WHETHER THERE IS ANYTHING ELSE THAT THE COURT CAN DO --

22 **COURT SECURITY OFFICER:** SORRY TO INTERRUPT. THEY  
23 SAY THEY HAVE A VERDICT.

24 **THE COURT:** OKAY. WELL, I GUESS NOT. LET'S CALL  
25 THEM IN. WE HAVE A VERDICT.

1 I WILL SAY I DON'T THINK THAT I COULD HAVE TOLD THEM UNDER  
2 THE LAW.

3 **MS. NUGENT:** DON'T THINK WHAT?

4 **THE COURT:** I COULD HAVE TOLD THEM UNDER THE LAW, I  
5 DON'T THINK I COULD HAVE DONE THAT.

6 **MS. NUGENT:** ABOUT THE MISTRIAL?

7 **THE COURT:** *U.S. VERSUS BONHAM*, 772 F.2D 449, NINTH  
8 CIRCUIT CASE 1985, AND *HERNANDEZ*. AN ALLEN CHARGE SHOULD NOT  
9 DISCUSS THAT TOPIC.

10 **MS. NUGENT:** THANK YOU.

11 **THE COURT:** BUT NOW I DON'T HAVE TO WORRY ABOUT IT.

12 **THE CLERK:** PLEASE RISE FOR THE JURORS.

13 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

14 **THE COURT:** GOOD MORNING. NOT A GOOD MORNING?  
15 GOOD MORNING.

16 **JURORS:** GOOD MORNING.

17 **THE COURT:** SO I UNDERSTAND YOU NOW HAVE A VERDICT?

18 **JUROR NO. 2:** WE DO, YOUR HONOR.

19 **THE COURT:** SO I'M NOT GOING TO RESPOND TO YOUR  
20 QUESTION, AND I WILL PASS THIS TO THE COURTROOM DEPUTY.

21 **THE CLERK:** LADIES AND GENTLEMEN OF THE JURY, YOU  
22 WILL LISTEN TO THE READING OF THE VERDICT.

23 IN CASE NO. 17-3961 YGR, CIARA NEWTON VERSUS EQUILON  
24 ENTERPRISES, LLC, DOING BUSINESS AS SHELL OIL PRODUCTS U.S.

25 WE, THE JURY, IN THE ABOVE-ENTITLED CASE UNANIMOUSLY

1 RENDER THE FOLLOWING VERDICTS AND FINDINGS OF FACT.

2 1. WE AWARD CIARA NEWTON DAMAGES FOR PAST AND FUTURE  
3 MENTAL SUFFERING AND EMOTIONAL DISTRESS IN THE AMOUNT OF  
4 \$475,000.

5 NO. 2. DID AN AGENT OR EMPLOYEE OF EQUILON ENTERPRISES,  
6 LLC, DOING BUSINESS AS SHELL OIL PRODUCTS U.S. ENGAGE IN  
7 CONDUCT WITH MALICE, OPPRESSION, OR, FRAUD? THE ANSWER IS  
8 YES.

9 QUESTION NO. 3. DID ONE OR MORE OFFICERS, DIRECTORS, OR  
10 MANAGING AGENTS OF EQUILON ENTERPRISES, LLC, DOING BUSINESS AS  
11 SHELL OIL PRODUCTS U.S. KNOW OF THIS CONDUCT AND AUTHORIZE OR  
12 RATIFY IT AFTER IT OCCURRED? THE ANSWER IS NO.

13 DATED... AND -- DATED -- WELL, THERE IS NO DATE, JUDGE.

14 **THE COURT:** OKAY.

15 **THE CLERK:** FOREPERSON JUROR NO. 2, JOSHUA... I'M  
16 SORRY, I CAN'T READ YOUR LAST NAME.

17 **THE COURT:** THELIN.

18 **JUROR NO. 2:** THELIN.

19 **THE COURT:** THELIN. ALL RIGHT.

20 MR. THELIN, I'M GOING TO ASK YOU, WE ARE GOING TO GIVE YOU  
21 A PEN TO DATE THIS.

22 **JUROR NO. 2:** I APOLOGIZE. I MISSED THE DATE.

23 **THE COURT:** THAT'S ALL RIGHT.

24 (PAUSE IN THE PROCEEDINGS.)

25 THANK YOU.

1 COUNSEL, WOULD YOU LIKE THE JURY POLLED?

2 MR. LAFAYETTE: YES, YOUR HONOR.

3 THE COURT: ALL RIGHT. IF THE COURTROOM DEPUTY WILL  
4 POLL THE JURY.

5 THE CLERK: LADIES AND GENTLEMEN OF THE JURY, AS I  
6 CALL YOUR JUROR NUMBER, PLEASE INDICATE BY SAYING "YES" OR  
7 "NO" IF THE VERDICTS AS JUST READ ARE YOUR TRUE AND INDIVIDUAL  
8 VERDICTS.

9 JUROR NO. 1?

10 JUROR NO. 1: YES.

11 THE CLERK: JUROR NO. 2?

12 JUROR NO. 2: YES.

13 THE CLERK: JUROR NO. 3?

14 JUROR NO. 3: YES.

15 THE CLERK: JUROR NO. 4?

16 JUROR NO. 4: YES.

17 THE CLERK: JUROR NO. 5?

18 JUROR NO. 5: YES.

19 THE CLERK: JUROR NO. 6?

20 JUROR NO. 6: YES.

21 THE CLERK: JUROR NO. 7?

22 JUROR NO. 7: YES.

23 THE CLERK: AND JUROR NO. 8?

24 JUROR NO. 8: YES.

25 THE CLERK: YOU HONOR, THE JURY HAS BEEN POLLED AND

1 THE VOTE IS UNANIMOUSLY AFFIRMED.

2 **THE COURT:** IF YOU WILL RECORD THE VERDICT.

3 **THE CLERK:** YOUR HONOR, THE VERDICTS ARE RECORDED.

4 **THE COURT:** I WOULD LIKE YOU TO STAMP IT.

5 (VERDICT STAMPED.)

6 **THE COURT:** THANK YOU.

7 ALL RIGHT. WOULD EITHER SIDE LIKE TO HAVE IT REREAD AFTER  
8 IT'S RECORDED?

9 **MS. NUGENT:** NO, YOUR HONOR.

10 **MR. LAFAYETTE:** NO, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. LADIES AND GENTLEMEN, YOU  
12 HAVE NOW COMPLETED YOUR JURY SERVICE. ON BEHALF OF ALL OF THE  
13 JUDGES ON THIS COURT, I WOULD LIKE YOU TO PLEASE ACCEPT MY  
14 THANKS FOR ALL OF YOUR TIME AND ALL OF YOUR EFFORT. I KNOW  
15 YOU WORKED VERY, VERY HARD.

16 NOW THAT THIS CASE IS OVER, YOU MAY CHOOSE WHETHER OR NOT  
17 TO DISCUSS THE CASE WITH ANYONE. YOU MAY DISCUSS IT WITH THE  
18 LAWYERS OR PARTIES OR ANY OF THEIR REPRESENTATIVES, AND YOU  
19 MAY TALK TO THEM IF YOU CHOOSE ABOUT YOUR DELIBERATIONS AND  
20 YOUR VERDICT.

21 HOWEVER, I HEREBY ORDER THAT THOSE DISCUSSIONS MUST OCCUR  
22 AT A REASONABLE TIME, IN A REASONABLE PLACE, AND WITH YOUR  
23 CONSENT. PLEASE REPORT TO THE COURT ANY UNREASONABLE CONTACT  
24 OR ANY CONTACT MADE WITHOUT YOUR CONSENT. A LAWYER OR PARTY  
25 OR REPRESENTATIVE WHO NOW -- WHO WOULD DO THAT NOW VIOLATES A

1 COURT ORDER, AND THEY MAY BE FINED.

2 I AM HAPPY TO MEET WITH YOU AFTER YOU GO BACK IN. I KNOW  
3 THE PARTIES WOULD LOVE TO MEET WITH YOU OUT IN THE HALLWAY ON  
4 YOUR WAY OUT. SO, WHEN I DISCHARGE YOU TO GO BACK IN THERE,  
5 JUST LET THE COURTROOM DEPUTY KNOW IF YOU WOULD LIKE TO MEET  
6 WITH ME OR THE PARTIES, AND HE'LL LET US KNOW AND WE'LL ABIDE  
7 BY YOUR WISHES. OKAY?

8 NOW, BEFORE I LET YOU GO, I WANT TO LEAVE YOU WITH THIS  
9 THOUGHT. I LIKE TO LEAVE WITH THE THOUGHT ON JURY SERVICE  
10 THAT WAS A QUOTE FROM A FORMER UNITED STATES SUPREME COURT  
11 JUSTICE, WILLIAM O. DOUGLAS. HE IS MUCH MORE POETIC THAN I SO  
12 THAT'S WHY I USE HIS WORDS RATHER THAN MINE. I AM NOT VERY  
13 POETIC.

14 BUT HE COMMENTED ON THE JURY SYSTEM AS FOLLOWS. HE SAID:

15 "A JURY REFLECTS THE ATTITUDES AND MORES OF THE COMMUNITY  
16 FROM WHICH IT IS DRAWN. IT LIVES ONLY FOR THE DAY AND DOES  
17 JUSTICE ACCORDING TO ITS LIMITS. THE GROUP WHO ARE DRAWN TO  
18 HEAR A CASE MAKE A DECISION AND THEN MELT AWAY. IT IS NOT  
19 PRESENT THE NEXT DAY TO BE CRITICIZED. IT IS THE ONE  
20 GOVERNMENTAL AGENCY THAT HAS NO AMBITION. IT IS AS HUMAN AS  
21 THE PEOPLE WHO MAKE IT UP. AND WHILE IT IS SOMETIMES  
22 PERSUADED BY EMOTION, THE EFFECTS ARE THAT AT TIMES IT TAKES  
23 THE SHARP EDGES OFF OF THE LAW AND USES CONSCIENCE TO SOFTEN  
24 SOME HARDSHIPS WITHIN THE LAW. AND SINCE IT IS OF AND FROM  
25 THE COMMUNITY, THE JURY GIVES THE LAW AN ACCEPTANCE IN A WAY



1 THAT VERDICTS BY JUDGES SUCH AS MYSELF CANNOT.

2 SO WITH THAT, I WISH YOU A VERY HAPPY HOLIDAY. THANK YOU  
3 SO MUCH FOR YOUR TIME AND SERVICE, AND YOU ARE DISCHARGED.

4 YOU MAY TAKE THEM BACK, AND THEY WILL LET YOU KNOW IF THEY  
5 WANT TO TALK TO US. THANK YOU.

6 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

7 **THE COURT:** OKAY. WE WILL PREPARE A FORM OF JUDGMENT  
8 THAT HAS THE ANSWERS TO ALL OF THESE QUESTIONS AS THE JUDGMENT  
9 TO BE ENTERED.

10 WE'LL SEND IT TO YOU, AND I'LL ASK THAT YOU GET BACK TO ME  
11 BY THE END OF NEXT WEEK WITH ANY STATEMENTS REGARDING CHANGES  
12 TO FORM. AND THEN WE'LL MOVE FROM THERE ONCE THE JUDGMENT IS  
13 ENTERED. ALL POST-TRIAL BRIEFING IS ON THE SCHEDULE BY CODE  
14 UNLESS THERE IS A STIPULATION TO THE CONTRARY.

15 OKAY?

16 **MR. LAFAYETTE:** I THINK THAT'S 28 DAYS AFTER.

17 **THE COURT:** AFTER THE JUDGMENT.

18 **MS. NUGENT:** THERE WAS A REQUEST FOR INJUNCTIVE  
19 RELIEF. AND HOW WOULD THE COURT LIKE TO DEAL WITH THAT  
20 REQUEST?

21 **THE COURT:** BRIEFING.

22 **MS. NUGENT:** OKAY.

23 **MR. LAFAYETTE:** WHAT'S THE INJUNCTIVE RELIEF?

24 **THE COURT:** WAS THE INJUNCTIVE RELIEF AS TO -- ON ALL  
25 CLAIMS?

1           **MS. NUGENT:** NO, NO. SPECIFICALLY BECAUSE OF THE  
2 JURY'S VERDICT --

3           **THE COURT:** OKAY. SO MAYBE I CAN'T ENTER JUDGMENT  
4 UNTIL WE DEAL WITH THIS TOPIC.

5           **MR. LAFAYETTE:** I AM NOT SURE WHAT THE INJUNCTIVE  
6 RELIEF --

7           **MS. NUGENT:** THE INJUNCTIVE RELIEF IS FEHA PROVIDES  
8 AT 12965(C) FOR INJUNCTIVE RELIEF, WHICH INCLUDES IN CASES  
9 LIKE THIS IF THERE IS SOME TRAINING THAT NEEDS TO BE DONE,  
10 SOME MONITORING, PARTICULARLY IN CASES WHERE THERE HAS BEEN  
11 FAILURE TO PREVENT.

12           **THE COURT:** I WON'T ENTER THE JUDGMENT UNTIL I AT  
13 LEAST HEAR FROM YOU IN WRITING.

14           **MS. NUGENT:** OKAY.

15           **THE COURT:** WHEN DO YOU WANT TO GET SOMETHING TO ME?

16           **MS. NUGENT:** I THINK WE CAN DO IT BY THE END OF  
17 TOMORROW.

18           **MR. LAFAYETTE:** I'M --

19           **THE COURT:** I'M NOT GOING TO BE HERE. I'M NOT GOING  
20 TO LOOK AT THIS FOR A WEEK, FOLKS. BECAUSE I HAVE MY VERDICT,  
21 I WILL BE IN THE CAR HEADING TO TAHOE TOMORROW.

22           **MS. NUGENT:** OKAY.

23           **THE COURT:** SO IT IS FINE WITH ME IF YOU WANT TO TAKE  
24 A WEEK OFF OR SOMETHING. WHY DON'T THE TWO OF YOU TALK ABOUT  
25 A SCHEDULE --

1           **MR. LAFAYETTE:** WE WILL DO THAT, YOUR HONOR.

2           **THE COURT:** -- AND CUT EACH OTHER SOME SLACK. IT HAS  
3 BEEN A TOUGH MONTH. WE WILL GET IT DONE.

4           **MS. NUGENT:** THANK YOU, YOUR HONOR.

5           **THE CLERK:** YOUR HONOR, THEY SAID THEY WOULD LIKE TO  
6 TALK TO YOU AND COUNSEL, ALL OF THEM.

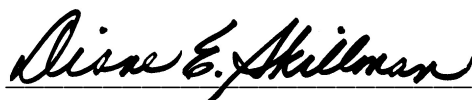
7           **THE COURT:** I'LL FINISH UP WITH THEM, AND YOU CAN  
8 MEET THEM IN THE HALL.

9           **MR. LAFAYETTE:** THANK YOU, YOUR HONOR.

10                   (PROCEEDINGS CONCLUDED AT 11:20 A.M.)

11  
12  
13                   **CERTIFICATE OF REPORTER**

14           I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE  
15 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY  
16 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
17 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

18  
19                   

20           DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

21           THURSDAY, DECEMBER 20, 2018  
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